

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Plaintiff,

v.

MARIO WEICKS,

Defendant.

Case No. 2:05-cr-00040-KJD-RJJ

ORDER

Presently before the Court is Defendant's Motion to Continue Re-sentencing (#217). The Government filed a response in opposition (#219) to which Defendant replied (#221).

To the extent that Defendant seeks a continuance in order to be interviewed by the Probation office for preparation of an amended or updated pre-sentence investigation report, the motion is granted. However, to the extent that Defendant seeks a new adjudication on the grouping of his counts of conviction, the Court declines to reconsider the grouping issue which has already been considered by the Court of Appeals. See Memorandum, Docket No. 177, p. 2-3 ("Weicks also argues that the district court erred by failing to group his felon-in-possession count with his four sexual misconduct counts. However, he waived this argument before the district court and is therefore precluded from raising it before this court."). The Court considers this resolution the law of the case.

The Ninth Circuit vacated this Court's denial of Weicks's section 2255 motion "as it pertain[ed] to [his] challenge to his conviction under section 924(c) and remand[ed] for further proceedings concerning that claim." The need to resentence Defendant after dismissal of the 924(c) claim, does not implicate the grouping of the Counts as already affirmed by the Ninth Circuit and waived by Defendant. The Court considers the scope of issues properly limited to resentencing without the 924(c) count. See U.S. v. Matthews, 278 F.3d 880, 889 (9th Cir. 2002).

1 Accordingly, IT IS HEREBY ORDERED that Defendant's Motion to Continue Re-
2 sentencing (#217) is **GRANTED in part and DENIED in part;**

3 IT IS FURTHER ORDERED that Sentencing and disposition are set for 3/3/2020 at
4 09:00 AM in LV Courtroom 4A before Judge Kent J. Dawson.

5 Dated this 6th day of December, 2019.

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8 Kent J. Dawson
9 United States District Judge
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